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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/241,246      | 02/01/1999  | TROY GENE ANDERSON   | HW-106-B-CON        | 8436             |

7590 05/02/2006  
ALBERT PETER DURIGON  
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CAMBRIDGE, MA 02140

| EXAMINER |
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LEE, PING

| ART UNIT | PAPER NUMBER |
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2615

DATE MAILED: 05/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/241,246

Applicant(s)

ANDERSON ET AL.

Examiner

Ping Lee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/13/02</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. In view of reexamination application 90/005,591 as indicated on the response received on 6/13/02, the double patenting rejection as indicated in the non-final office action mailed 2/8/02 has been vacated since all claims in patent 5,867,580 has been cancelled. In view of the newly filed IDS received on 6/13/02, a new rejection is provided below.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US005619179A) in view of Goldfarb (US005145447A).

Regarding claim 1, Smith discloses an improved digital sound relaxation system that enables individuals to selectably choose, according to their individual tastes, a combination of at least two (2) individual prerecorded natural sounds of a plurality of prerecorded natural sounds for concurrent replay, comprising:

(1) a digital memory (U1 or U2 in Fig. 3A of Smith) in which a plurality of prerecorded sounds are stored in a predetermined manner;

(2) least one sound selector switch (SW1 or SW2) for selecting at individual ones of said plurality of prerecorded sounds stored in said digital memory for replay;

(3) a combine switch (on/off switch for unit 10 which is connected to master volume control VR4 of the summing amplifier can be considered the third switch because it can carry out the same functions as claimed) to select for replay a sound that is a combination of at least two (2) different individual sounds selected by activating said at least one sound selector switch.

Smith does not disclose a processor coupled to the digital memory and responsive the switches operable in one of two basis modes; in one mode, any prerecorded sound stored in the digital memory is individually replayed by activating the at least one sound selector switch, and in another mode, any combination of at least different individual prerecorded sounds stored in the digital memory are concurrently replayed by activating the at least one sound selector switch and the combine switch.

Goldfarb discloses a sound reproducing system which is comprised of a processor (31) coupled to the digital memories (Fig. 3) and responsive to the switches (27 and 13a-13h) operable in one of two basic modes; in one mode, any prerecorded

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sound stored in at one of the memories is individually replayed by activating at least one of the first and second sound selector switches (when switch 27 is activated, prerecorded sound in memory 51 is replayed) and in another mode, any combination of at least two individual prerecorded sounds stored in the digital memories are concurrently replayed by activating the first and second sound selector switches (when switches 27 and 13c are activated, a combination of at least two individual prerecorded sounds stored in the memories are concurrently replayed) and the third switch (power switch 12 is on). Since Goldfarb has disclosed a processor coupled to the memories and responsive to the switches as claimed, it would have been obvious to one of ordinary skill in the art to combine Goldfarb's teaching of using a processor to control the memories and the switches with Smith because a system would be compact and light by using a single processor for controlling different devices within the system.

The limitations in claim 7 are similar to claim 1, which has been discussed above.

5. Claims 2-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Goldfarb as applied to claim 1 above, and further in view of Marsona 1250 or Digital Sound Soother XS.

Regarding claim 2, Smith as modified does not disclose that the two memories are in "loop" format. However, Marsona 1250 or Digital Sound Soother XS teaches that it has been a well known practice to combine "loop" (a.k.s., "base" or "continuous") sounds with "sound bite" (a.k.s., "overlay" or "auxiliary") sounds, e.g., a surf sound can be combined with an overlay of seagulls and bell buoys as shown by Marsona 1250, continuous wave and surf sound can be combined with auxiliary fog horn, buoy bell or

barking seal sound as shown by Digital Sound Soother XS. Thus, it would have been obvious to one of ordinary skill in the art that the sounds in memories U1 and U2 of Smith could have been different, with one being a plurality of continuous sounds and the other being plurality of "sound bite" sounds. It was considered as a matter of design choice by the manufacturer based on the market preference on the specific type of sound.

The limitations of claims 3, 4 and 6 are similar to claims 1 and 2 , which have been discussed above.

Regarding claim 5, Smith teaches that the sound input can be from an external memory. See Fig. 2.

### ***Conclusion***

6. Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on 6/13/02 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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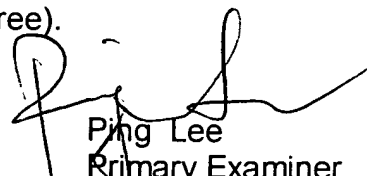
extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ping Lee whose telephone number is 571-272-7522.

The examiner can normally be reached on Monday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian C. Chin can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ping Lee  
Primary Examiner  
Art Unit 2615

pwl